

# Sidney Public Schools

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SENATE JUDICIARY  
EXHIBIT NO. 2  
DATE 2/10/09  
DOUGLAS W. SULLIVAN  
SOL NO Superintendent SB338  
NICOLE BEYER  
District Clerk  
LEIGH MERRITT  
Personnel Payroll Clerk  
NANCY VAIRA  
Assistant Clerk  
SANDY EDWARD  
Administration Assistant

January 15, 2009

Denise Juneau  
Superintendent of Public Instruction  
Montana Office of Public Instruction  
1227 11<sup>th</sup> Avenue  
Helena, MT 59620

Re: Achievement in Montana (AIM) System

Dear Superintendent Juneau,

As the Superintendent for the Sidney Public Schools I have been reviewing the Achievement in Montana (AIM) System and have identified, what I believe to be, some serious concerns with the system. I have communicated these to my Board of Trustees and they are in agreement that the AIM System, as currently designed, has numerous flaws. For your review, I have attached the text of a correspondence I have shared with various legislators and Darrell Rud, Executive Director of the School Administrators of Montana.

Further, I have communicated the concerns to Mr. Runkel, Ms. Quinlan and Ms. Loewen, from your office. Given our long history and friendship, I have communicated more frequently with Mr. Runkel and he is likely the individual most familiar with my concerns. This is an issue of serious concern to the School Board and administration of the Sidney Public Schools and I am striving to address our concerns through OPI rather than the legislature. I hope you will review the information I have provided and I would welcome a conversation with you about the AIM System to discuss the concerns of the Sidney Public Schools.

I thank-you in advance for your time and attention to this information, if you have any questions, please do not hesitate to contact me.

Sincerely,

  
1-15-09

Douglas W. Sullivan  
Superintendent of Schools  
Sidney Public Schools

## INTRODUCTION

This school year, school districts throughout Montana were advised that changes regarding the submission of student information to the Office of Public Instruction (OPI) would be implemented. While it is true school districts have submitted student information to the OPI in past years, it has been in the form of aggregated numbers. Schools were informed that, beginning this school year, the information would be submitted to the OPI on a personally identifiable basis. In short, a specific **student name** would be attached to the information submitted to the OPI. This system is identified as Achievement in Montana (AIM). The Board of Trustees and administration of the Sidney Public Schools have serious reservations regarding the AIM System.

The OPI web site states, "In 2005, the Montana Legislature defined a basic system of free quality education that included the requirement to assess and track student achievement (20-9-309 MCA). The legislature appropriated \$2.8 million to the OPI to develop and implement a statewide student achievement system that provides accurate and timely information about the performance of Montana's K-12 students and schools. The system, called Achievement in Montana, will support education information processes at the local and state level." It further states, "To meet this mandate, a **unique student identifier number** is assigned to every student who receives any form of education service through a public school district, non-public accredited school district, or special education cooperative." While it is necessary for the OPI to collect student data and provide accountability to the legislature, it is not necessary for the information to be collected on a personally identifiable basis and inserted into a huge database maintained in Helena.

## STATEMENT OF CONCERN

The crux of the concern centers on the fact that the information school districts are required to submit to the OPI, through the AIM System, is not just tied to the unique student identifier number, but is required to be submitted on a personally identifiable basis with the student name attached. Additionally, parents can only exercise their parental rights to control access to their child's educational information if they are willing to risk a loss of state funding to their local school district.

All school districts are required to submit personally identifiable information on students to the OPI beginning this year that will, **at a minimum**, include the following:

Student Name	Gender	Birthdate
Grade Level	Race/Ethnicity	State ID #
Entry Date and Code	Free/Reduced Lunch	If Student is Special Education
Title I Information	Fall Attendance	Limited English Proficient
Migrant	Foreign Exchange	Homeless
Gifted and Talented	Section 504	Career and Technical Education

Additionally, districts will also be required to submit a student's IEP and the parent's name, address and phone numbers if said student is enrolled in special education when the student data is entered into the AIM system. Later this school year, school districts will be required to submit specific disciplinary information about the student's conduct during the year which raises additional privacy concerns.

To further illuminate the frustration of the AIM System, if parents decide to opt out of this program to protect their privacy rights and those of their child, it can only be accomplished if the parent is willing to jeopardize certain sources of school funding for the local school district. For example, in my case, if I decline to allow the district to submit the information on my son, when it is time to calculate the Indian Achievement Gap payment my son will not be in the data base and the district will not receive the funding for this component of the funding formula. It then follows that parents of special education children who opt to protect their privacy rights and the right to control access to the student records will also jeopardize the special education funding provided by the states. One parent of a child in Sidney has already informed the superintendent of schools that the district will not be permitted to submit the personally identifiable special education information of her son into the AIM System. These are just two

examples of the intrusion into the parental rights, intrusion into privacy rights and how the system will punish the students most in need of the additional funding provided by the Legislature.

The Federal Education Rights and Privacy Act (FERPA) provides certain guarantees to parents about the ability to control access to and distribution of the educational records of their children (See 34 CFR Part 99; December 9, 2008). Provided below are some specific examples:

- The purpose of FERPA is two-fold: to assure that parents and eligible students can access the student's records and to protect their right to privacy by limiting the transferability of their records without their consent. The only parties who have a right to obtain access to education records under FERPA are parents and eligible students. (See 34 CFR Part 99; December 9, 2008, page 74831)
- Educational agencies and institutions are not required under FERPA to disclose directory information to any party. (See 34 CFR Part 99; December 9, 2008, page 74809)

However, in a conflicting statement the CFR states the following:

- We explained in the preamble to the NPRM that the statute allows disclosure of personally identifiable information from education records without consent to authorized representatives of "State educational authorities" in connection with an audit or evaluation of Federal or State supported education programs. (See 34 CFR Part 99; December 9, 2008, page 74812)

While it is true personally identifiable student has been provided each time the OPI has audited a school district to guarantee compliance with Federal regulations, the information has not been aggregated into a huge database maintained in Helena. FERPA legitimately allows access by authorized State individuals but does not require the establishment of a government controlled, personally identifiable, database on **Montana's children** to accomplish this necessity. This provision can be accomplished without the intrusions into our individual privacy this database establishes.

Another provision of the CFR that should alarm all citizens of Montana is that no notice to parents or eligible students is required when **unauthorized access** to the personally identifiable student information occurs. It is stated:

- The Department does not have the authority under FERPA to require that agencies or institutions issue a direct notice to a parent or student upon an unauthorized disclosure of education records. (See 34 CFR Part 99; December 9, 2008, page 74834)

While there are other concerns that could be included in this text, the minimal information provided should be sufficient to identify the anxiety created with the personally identifiable student database that is currently being established through the AIM System. However, the final issue that requires redress is protecting and honoring the people of Montana and their constitution. Contained in the Montana State Constitution, Article II, section 10 states:

- The right of individual privacy is **essential** to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

There is no doubt a compelling State interest exists to audit school programs and enable the State to guarantee the provision of a free quality public education. However, it is not necessary to accomplish this goal through the privacy and parental rights intrusions created by the AIM System.

## **SUMMATION**

The succinct explanation of the concerns regarding the AIM System is as follows:

- Erosion of individual rights;
- Elimination of privacy rights;
- Inadequacy of parental notification regarding the AIM System;
- Inability of parents to exercise parental rights without jeopardizing school funding and;
- Violation of the Montana State Constitution.

In a State where the Governor and Legislature legitimately and unanimously opposed the REAL ID Program, the AIM System should be particularly alarming. These serious concerns require immediate attention by the OPI and/or legislature.

## **PROPOSED SOLUTION**

As previously stated, there is no doubt a compelling State interest exists to audit school programs and enable the State to guarantee the provision of a free quality public education. This was accomplished previously and can still be accomplished without the intrusions of the AIM System. The following suggestions are provided as a means to assist in addressing the concerns and the compelling State interest identified in this text:

- The OPI should immediately cease collecting and aggregating personally identifiable student information in Helena through the AIM System;
- The OPI should work with School Boards, school district administrators, the Montana School Boards Association and the School Administrators of Montana to revise the AIM System to guarantee personally identifiable student information is not aggregated in Helena;
- If it is ever necessary to collect personally identifiable student information in Helena it should be a requirement for the state agency collecting the information to notify all parents;
- The revised system should include a provision that guarantees a parental right to prevent submission of any personally identifiable information into a state database without fear of consequences;
- The revised system should include a process through which the local school district assigns the unique student identifier number through a process established by the OPI and;
- The revised system should guarantee that student names and data are not aggregated in Helena and that at least one of these categories of data, preferably the student name, is maintained with the local school district.

Protecting the rights of the people we serve should be the preeminent concern of the Legislature and all governmental agencies. Implementing the proposed improvements to the necessary data collection system will clearly demonstrate this priority to the people of Montana.